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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,313	05/10/2001	Hans-Peter Krause	514413-3877	5939

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NEW YORK, NY 10151

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/05/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/853,313

Applicant(s)

KRAUSE ET AL.

Examiner

Alton N. Pryor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 13 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-5,7-9 and 12-42 is/are pending in the application.
- 4a) Of the above claim(s) 17-19 and 21-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-5,7-9,12-16,20 and 25-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION*****Election Requirement***

Based on Applicant's response dated 5/13/03 to Examiner's election of species requirement mailed 11/12/02, the election requirement dated 11/12/02 is withdrawn. Applicant is correct in that the response dated 9/3/02 to election requirement dated 7/29/02 is sufficient. The election requirement dated 7/29/02 is maintained. The elected invention comprising a combination of fenoxaprop-p-ethyl (pesticide) and isoxadifen-ethyl (pesticide) wherein fenoxaprop-p-ethyl is partially or fully surrounded by polyurea is not allowable. See 35 USC 102(b) and 103(a) rejections below.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4,5,7-9,12-16,25-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Lundstedt et al (EP 619 073; 4/1/94). Lundstedt teaches a method for suppressing the antagonistic interactions between at least two agrochemically actives (insecticides, growth regulators, safeners, herbicides, nematocides) which comprises surrounding at least one of the active compounds with a carrier material (polyurea). The polyurea microencapsulates the at least one active compound and the polyurea is made from isocyanate prepolymers such as toluene 2,4-diisocyanate and

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hexamethylene diisocyanate. Lundstedt teaches that surfactants can be added to the actives. Lundstedt teaches the above combination as a formulation which is applied to pests (weeds or plants) for the purpose of pest control. In a process for preparing the formulation the simple act of dissolving, stirring or mixing ingredients is well known and therefore unpatentable. See page 2 lines 19-21, page 2 line 46 – page 3 line 1, page 3 lines 38-47, page 6 lines 11-20 claims 13 and 14.

Claims 1,2,4,5,7-9,12-16,25-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Scher et al (WO 9008468; 8/9/90). Scher et al teaches a method for suppressing the antagonistic interactions between at least two agrochemically actives (insecticides, growth regulators, safeners, herbicides) which comprises surrounding at least one of the active compounds with a carrier material (polyurea). The polyurea microencapsulates the at least one active compound. The polyurea is made from isocyanate prepolymers such as toluene 2,4-diisocyanate and hexamethylene diisocyanate by interfacial polycondensation. Scher teaches that surfactants can be added to the actives. Scher teaches the above combination as a delayed delivery formulation which is applied to pests (weeds or plants) for the purpose of pest control. In a process for preparing the formulation the simple act of dissolving, stirring and mixing ingredients is well known and therefore unpatentable. See page 1 lines 33- page 2 line 7, page 4 lines 2-26, page 5 lines 6-27, page 6 line 27 – page 7 line 35, page 8 lines 23-28, claims 1-5.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3,20,35-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scher as applied to claims 1,2,5,7-9,12-16,25-34 above. Scher teaches all that is recited in claims 3,20,35-42 except for the invention specifically comprising a combination of fenoxaprop-p-ethyl (pesticide) and isoxadifen-ethyl (pesticide) wherein fenoxaprop-p-ethyl is partially or fully surrounded by polyurea. It would have been obvious to one having ordinary skill in the art to make Applicant's elected invention at the time Scher's invention was made. One having ordinary skill in the art would have been motivated to do this since Scher teaches generically the combination of two pesticides wherein one pesticide is partially or fully surrounded by a polyurea carrier.


***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 703 308-4691. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.

  
Alton Pryor  
Primary Examiner  
AU 1616

**ALTON N. PRYOR**  
**PRIMARY EXAMINER**